

REMARKS

The present application is a divisional of USSN 08/855,499, filed May 13, 1997, now U.S. Patent No. 6,271,278, which is a continuation-in-part of USSN 08/416,269, filed April 4, 1995, now U.S. Patent No. 5,750,585. Patent '278 is the subject of reissue application 10/807,227, filed March 22, 2004.

Claims 56-61 and 63-74 are pending in the application. Claims 64-73 are withdrawn. Claims 56-61, 63 and 74 were rejected in the Official Action. Reexamination and reconsideration are respectfully requested.

***Claims 56-61, 63 and 74 were rejected under 35 USC 112, 1<sup>st</sup> paragraph, as failing to comply with the written description requirement.***

The Action indicates that this is a new matter rejection and the claims contain subject matter not described in the specification in such a way as to convey that applicants had possession of the invention.

As indicated in Applicants' previous reply, the claims contain subject matter from co-pending USSN 08/416,269 that was inadvertently omitted in the instant application. Per 37 CFR 1.57(a)(1), the instant application must be amended to include the inadvertently omitted portions. Accordingly, the specification is amended hereinabove and the locations of the

inadvertently omitted subject matter in the prior application  
are identified as follows:

- (1) The subject matter of the first paragraph appears in  
Patent '585 at col. 3, lines 17-31 and lines 50-55,  
and col. 9, lines 15-17.
- (2) The subject matter of the second paragraph appears in  
Patent '585 at col. 3, lines 34-45.
- (3) The subject matter of the third paragraph appears in  
Patent '585 at col. 3, line 61 - col. 4, line 5 and  
U.S. Patent No. 4,178,361 at col. 5, lines 23-41,  
which is incorporated by reference into Patent '585.
- (4) The subject matter of the fourth paragraph appears in  
Patent '585 at col. 4, lines 33-47 and U.S. Patent No.  
4,178,361 at col. 5, lines 43-65.
- (5) The subject matter of the fifth paragraph appears in  
Patent '585 at col. 6, lines 40-56.

The Action questioned whether the instant claims are  
directed to inadvertently omitted subject matter allowed for  
under 37 CFR 1.57(a). The Examiner is urged to review the Rule  
131 Declarations of the inventors and the Statement of James H.  
Meadows filed on August 8, 2006 for background information.  
Briefly, the Declarations and Statement establish that the  
invention disclosure for the instant application was sent to the

law firm of Lowe, Price, LeBlanc & Becker on December 16, 1996 for preparation of the application. A final draft of the application was forwarded to the inventors on May 2, 1997. A copy of the original invention disclosure has been filed in the parent (reissue) application as an attachment (Exhibit A) to the Declaration of James H. Meadows dated June 25, 2007.

In addition, the Rule 132 Declaration of James H. Meadows is submitted herewith, which further establishes the inadvertent nature of the omitted subject matter. The Declaration establishes that preparation and filing of the parent of the instant application was handled by a different law firm than the firm that handled preparation and filing of the prior-filed application. Consequently, preparation and filing of the parent of the present application occurred without knowledge of or possession of the prior application (USSN 08/416,269). The pertinent disclosures of the prior application were thereby inadvertently omitted from the instant application either by failing to incorporate by reference the subject matter disclosed therein or by claiming priority of the previous application. A claim of priority has subsequently been made in the reissue application (USSN 10/807,227) of the parent. The specification has been amended hereinabove to include the inadvertently omitted portions of the prior application. 37 CFR 1.57(a).

The Action further indicated that applicants should note the provisions of 37 CFR 1.57(a)(3) relating to amendment by way of petition. However, the present application is entitled to a filing date under 37 CFR 1.53(b). Therefore, a petition and fee are not required to make the amendment.

In view of the above amendments and remarks, it is clear that the rejection for failure to comply with the written description requirement has been overcome.

***Claims 56-61, 63 and 74 were rejected under 35 USC 102(a) as being anticipated by Hahnle et al. (DE 195 40 951).***

Claims 56-61, 63 and 74 presented hereinabove for examination are entitled to the priority date of U.S. Patent 5,750,585 (April 4, 1995) inasmuch as the claimed subject matter appears wholly therein. MPEP 201.11 Consequently, Hahnle et al. is not properly cited against the claimed invention.

***Claims 56-61, 63 and 74 were rejected under 35 USC 102(b) as being anticipated by Van Phan et al. (US Patent 5,506,035).***

Claims 56-61, 63 and 74 presented hereinabove are entitled to the priority date of U.S. Patent 5,750,585 (April 4, 1995). The publication date of van Phan et al. is April 9, 1996. Accordingly, van Phan et al. is not properly cited against the claimed invention.

***Claims 56-61, 63 and 74 were rejected under 35 USC 102(b) as being anticipated by Park et al. (Society of Biomaterials article).***

Claims 56-61, 63 and 74 presented hereinabove are entitled to the priority date of U.S. Patent 5,750,585 (April 4, 1995). The publication date of Park et al. is April 5-9, 1994. Accordingly, Park et al. is not properly cited against the claimed invention.

***Claims 56-61, 63 and 74 were rejected under 35 USC 102(b) as being anticipated by EP 0744435.***


Claims 56-61, 63 and 74 presented hereinabove are entitled to the priority date of U.S. Patent 5,750,585 (April 4, 1995). The publication date of EP 074435 is November 27, 1996. Accordingly, this reference is not properly cited against the claimed invention. Moreover, this reference is not properly cited against the claimed invention even based on the filing date of the parent application (May 13, 1997), inasmuch as it was published less than a year prior to the filing date.

In view of the foregoing amendments and remarks, the Examiner is urged to withdraw the finality of the rejections and issue a Notice of Allowability.

U.S. Serial No.: 09/811,248  
Amendment dated March 17, 2008

If, in the opinion of the Examiner, a telephone conversation could expedite prosecution, the Examiner is invited to telephone the undersigned attorney at the number given below.

Respectfully submitted,

  
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I, James H. Meadows, hereby certify that this correspondence is being deposited with the U.S. Postal Service with sufficient postage as first class mail in an envelope addressed to: *Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450* on 3/17/08      Signature 